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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 09/898,286 | 07/03/2001 | Geoffrey Donald Tremain | 1821-01100 | 2215 |

23505 7590 02/08/2006

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EXAMINER

SHIFERAW, ELEN I A

ART UNIT

PAPER NUMBER

2136

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

| | | |
|-------------------------------|--|--|
| Application No. 09/898,286 | Applicant(s) TREMAIN, GEOFFREY DONALD | |
| Examiner Eleni A. Shiferaw | Art Unit 2136 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, ~~but prior to or on the same day as filing a Notice of Appeal.~~ To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 2 months from the mailing date of the ~~final rejection~~ *Notice of Appeal*.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 20 January 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-55.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Argument is not persuasive. Applicant's invention as defined by independent claims of the present application is how to host or provide computer services (such as applications hosting services, web hosting services: files, data and archiving services, e-commerce...) for plural customers in a secure way whilst minimizing the real physical resources that are required (virtual machine).

Regarding claims 1, 20, 37, and 54, Bugnion et al. teaches a system in which one or more virtual machine is set up for and by each of several customers to provide computer services for the customers (abstract; virtual machines are used to run multiple commodity operating system...share files/data...and also Devine discloses many different types of applications running on the same physical machine of virtual machine. For example: Microsoft's operating system and unix operating system running on the same virtual machine (see Devine col. 24 lines 27-50)).

Devine et al. teaches the use of plural machines on a real computer in which at least one virtual machine is set up by and for each of the customers, with each of those virtual machines having a specification that is specified by the respective customer (see col. 25 lines 2-23, and col. 24 lines 27-50; multiple processors allowing simultaneous execution of multiple virtual machines and/or execution of a virtual machine with multiple virtual processors).

All limitations of the claimed invention AS CLAIMED are taught by the references as shown on the OA. Examiner would like to add a relevant prior art for applicant's reference. Wesinger, JR. et al. Pub. US 2001/0011304 A1 discloses virtual hosting of contents through the WWW. to Web users. Multiple virtual host servers run on the same physical machine to provide different database content, files... to users. It is very well known to host/provide computer services like web hosting, files, data,... to plurality of users at the time of the invention was made.

The affidavit submitted on 1/20/06 on the same date of notice of appeal will not be entered because was not earlier/timely presented (MPEP 716.01). Applicant's affidavit describes the novel invention of the present application and what the base references, applied for first Non Final OA and Final OA, fail to teach for independent claims 1, 20, and 54. Examiner applies the same references for claims 1, 20, and 54 for Final Office Action rejection. However, applicant fails to present the affidavit earlier.



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